BERNICE SHELDON

IBLA 83-526 Decided June 11, 1985

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. F 46229 through F 46242.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   BLM may not declare an unpatented mining claim abandoned and void for failure to file a notice of intention to hold the claim with both the local recording office and BLM on or before Oct. 22, 1979, where the claimant has already filed within the 3-year period following Oct. 21, 1976, pursuant to sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), thereby initiating the statutory requirement to file prior to Dec. 31 of each year thereafter.

APPEARANCES: R. Eldridge Hicks, Esq., and Richard B. Collins, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bernice Sheldon has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 8, 1983, declaring various placer mining claims, F 46229 through F 46242, 1/ abandoned and void for failure to file "by October 22, 1979" a notice of intention to hold the

1/ These claims are the Moran Group, Kuklut Group, Dummy Group, Hipnak Group, Axel Group, Charles Group, Sheldon Group, Shungnak Group, Bismark Group, Henry Group, John Dahl Group, Jade Group, Daniel Boone Group, and Holden Group.

claims with the Kotzebue Recording District, pursuant to section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). 2/

Appellant's mining claims were originally located by Charlie Sheldon, appellant's husband, between May 8, 1936, and June 10, 1956, and filed for recordation with BLM on May 12, 1978, pursuant to section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). The location notices state that as of 1978, appellant and her husband were the joint owners of the claims. In addition, along with the location notices, appellant filed an affidavit of assessment work with respect to the claims involved herein which had been recorded with the Kotzebue Recording District on November 14, 1977.

On September 24, 1979, a notice of intention to hold the claims was filed with BLM. The notice was signed by appellant and her husband and notarized on September 19, 1979. There was no indication on the notice that it had been filed with the Kotzebue Recording District. The notice stated that Charlie Sheldon had been seriously ill since October 1978 and had been unable to do the assessment work during 1979. Charlie Sheldon subsequently died on September 29, 1979. Thereafter, appellant continued to make the annual filings required by section 314(a) of FLPMA, in her own name.

In addition, the record indicates that on November 27, 1979, appellant filed a notice of intention to hold the claims with the Kotzebue Recording District. This notice was signed by her and notarized on November 26, 1979. The notice was substantially the same as the notice filed with BLM, even listing the claims in the same order, with the exception of the omission of the BLM serial numbers and the addition of a notice that appellant was now the sole owner of the claims.

Appellant apparently chose to file with the recording district a different notice of intention to hold the claims from that originally filed with BLM because there was no duplicate of the latter document and, after Charlie Sheldon's death on September 29, 1979, appellant could not generate a duplicate original of the notice of intention to hold the claims originally filed with BLM, with both signatures notarized.

In its March 1983 decision, BLM declared appellant's mining claims abandoned and void because under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), appellant was required to file a notice of intention to hold the claims both with BLM and the Kotzebue Recording District "by October 22, 1979" and, hence, the notice filed with the recording district on November 27, 1979, was "not timely filed." BLM also noted that the notice filed with BLM was required to be an "exact legible reproduction or duplicate" of the instrument filed with the state.

2/ Review of this appeal was suspended by order of the Board dated May 8, 1984, pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of those provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).

Appellant essentially contends that, having filed an affidavit of assessment work in May 1978, the recordation provisions of section 314 of FLPMA require subsequent filings be made prior to December 31 of every year thereafter. We agree.

[1] Section 314(a) of FLPMA, requires the owner of an unpatented mining claim located prior to October 21, 1976, to file either evidence of annual assessment work or a notice of intention to hold the claim "within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter." Failure to file timely "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner" under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982).

In Harvey A. Clifton, 60 IBLA 29 (1981), the Board concluded that the requirement of filing the instruments called for by section 314(a) of FLPMA "prior to December 31 of each year thereafter" is initiated by the first filing with BLM of evidence of annual assessment work or a notice of intention to hold. So, in this case where the claimant filed an affidavit of assessment work in May 1978, the next filing with BLM was to be made on or before December 30, 1979. The claimant made such a filing timely, both with BLM and the Kotzebue Recording District.

However, the notices of intention to hold the claims filed with the Federal and state agencies were not exact duplicates. Section 314(a)(2) of FLPMA requires the owner of an unpatented mining claim to file with BLM "a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection." The applicable Departmental regulation in effect when appellant's 1979 notice of intention to hold the claims was filed with BLM, 43 CFR 3833.2-3(a) (1979), provided that a notice of intention to hold shall be an "exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner of a claim or his agent filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded." The current regulation is substantially unchanged in this respect. See 43 CFR 3833.2-3(b).

However, 43 CFR 3833.2-3(a) now provides that, with respect to a notice of intention to hold a claim, the claimant "shall file with * * * [BLM] the same documents which have been, or will be recorded with the county or local office of recordation." (Emphasis added). Thus, as interpreted by the Department, it is sufficient compliance with section 314(a)(2) of FLPMA for a claimant to file with BLM a copy of the instrument which is to be filed with the county. 3/ In the present case, appellant and her husband filed a notice of intention to hold the claims with BLM and then, because of the intervening death of her husband, appellant was unable to file that exact same document with the Kotzebue Recording District.

However, the document that was filed with the county was substantially the same as that previously filed with BLM. We are not prepared to hold, in

3/ See 47 FR 56300, 56301 (Dec. 15, 1982) (preamble to revised rules).

such circumstances, that the notice of intention to hold the claims involved herein originally filed with BLM was not a "copy" of the instrument filed with the Kotzebue Recording District, within the meaning of section 314(a)(2) of FLPMA. 4/ See Carr v. National Capital Press, 71 F.2d 220 (D.C. Cir. 1934). Indeed, the document filed with BLM was fully consonant with the purpose of the statutory requirement for annual filings, i.e., to notify BLM of the continuing vitality of mining claims located on the public lands. See Topaz Beryllium Co. v. United States, supra; cf. S. Rep. No. 583, 94th Cong., 2d Sess. 64-65 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

4/ To the extent that the document filed with BLM does not constitute an "exact legible reproduction or duplicate" in accordance with 43 CFR 3833.2-3(b), the failure to comply with the regulatory requirement may be treated as a curable defect of which the claimant should be given notice and an opportunity to rectify prior to any decision voiding the claims. Harvey A. Clifton, supra at 34. This principle, derived from the case of Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981), is currently set forth at 43 CFR 3833.4(b).